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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXASBY G DEPUTYIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

COMMUNICATIONS WORKERS OF §
AMERICA, AFL-CIO, §
PLAINTIFF, §
V. §
§
SOUTHWESTERN BELL TELEPHONE §
COMPANY; SBC ADVANCED §
SOLUTIONS, INC.; AT&T DATACOMM, §
INC.; AT&T OPERATIONS, INC.; §
AT&T SERVICES, INC.; AND SBC §
TELECOM, INC., §
DEFENDANTS. §

CAUSE NO. 1:18-CV-271-LY

ORDER ON REPORT AND RECOMMENDATION

Before the court are Defendants' Joint Motion for Summary Judgment on Plaintiff's Complaint and Defendants' Counterclaim filed October 26, 2018 (Doc. #23) and Communications Workers of America, AFL-CIO's Motion for Summary Judgment filed October 26, 2018 (Doc. #24), along with all responses and replies. The motions, responses, and replies were referred to the United States Magistrate Judge for findings and recommendations. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72; Loc. R. W. D. Tex. Appx. C, 1(d). The magistrate judge filed an Report and Recommendation on April 5, 2019 (Doc. #32), recommending that this court deny Plaintiff's motion for summary judgment, grant Defendants' motion for summary judgment, and render final judgment denying all relief to Plaintiff on its complaint and awarding Defendants relief on their counterclaim seeking to enforce the February 23, 2018 arbitration award finding no contractual violation.

Pursuant to 28 U.S.C. § 636(b) and Rule 72(b) of the Federal Rules of Civil Procedure, a party may serve and file specific, written objections to the proposed findings and recommendations of the magistrate judge within 14 days after being served with a copy of the report and

recommendation, and thereby secure a *de novo* review by the district court. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).

Communications Workers of America, AFL-CIO's Objections to the Report and Recommendations of the United States Magistrate Judge were filed April 19, 2019 (Doc. #33). Defendants' Opposition to Plaintiff's Objections to the Magistrate Judge's Report and Recommendation were filed May 1, 2019 (Doc. #34). In light of Plaintiff's objections, the court has undertaken a *de novo* review of the entire case file in this action and finds that the report and recommendation should be accepted and approved as modified for substantially the reasons stated therein.

Plaintiff objects the magistrate judge's failure to apply the finality provision of the collective bargaining agreement between the parties to the January 19, 2018 arbitration award and to enforce the limitations of Rule 40 of the American Arbitration Association Rules for Labor Arbitration. In response, Defendants argue that the magistrate judge correctly concluded that the Arbitrator did not exceed his powers in applying Rule 40 to correct a technical error in the January 19, 2018 ruling in his February 23, 2018 ruling, and that the Arbitrator's interpretation of his powers under the American Arbitration Association Rules was supported by Fifth Circuit precedent. The court agrees, and will overrule Plaintiff's objections.

IT IS THEREFORE ORDERED that Communications Workers of America, AFL-CIO's Objections to the Report and Recommendations of the United States Magistrate Judge were filed April 19, 2019 (Doc. #33) are **OVERRULED**.

IT IS FURTHER ORDERED that the Report and Recommendation of the United States Magistrate Judge (Doc. #32) is hereby **APPROVED AND ACCEPTED** for the reasons stated herein.

IT IS FURTHER ORDERED that Communications Workers of America, AFL-CIO's Motion for Summary Judgment filed October 26, 2018 (Doc. #24) is **DENIED**.

IT IS FURTHER ORDERED that Defendants' Joint Motion for Summary Judgment on Plaintiff's Complaint and Defendants' Counterclaim filed October 26, 2018 (Doc. #23) is **GRANTED AS FOLLOWS**: summary judgment is rendered against Plaintiff on its complaint and in favor of Defendants on their counterclaim to enforce the February 23, 2018 arbitration award.

A Final Judgment shall be rendered subsequently.

SIGNED this 9th day of July, 2019.


LEE YEAKEL
UNITED STATES DISTRICT JUDGE